



Georgia Technology Authority Terms and Conditions of Service



Important Notice: These Terms and Conditions of Service (“Service Terms”) apply to all GTA Services unless otherwise agreed in writing. They may be modified or supplemented by Service-specific terms and conditions contained in the Products and Services Catalog, which is available to Customer on GTA’s website at http://gta.georgia.gov/oo/channel_title/0,2094,1070969_38601382,00.html or in a written agreement between GTA and the Customer.

1. SERVICES

1.1 Use of Service

1.1.1 Permissible Use: Service may be used only for legitimate government purposes.

1.1.2 Customer Responsibilities - The Customer is responsible for:

- a. Obtaining, installing and maintaining all equipment, applications, materials and supplies necessary to interconnect the Customer’s equipment or communications system to the Service.
- b. Taking all reasonable steps necessary to preserve and protect GTA-provided equipment, software, data and systems located on Customer’s premises or, otherwise, in Customer’s control and used in connection with GTA Service, whether owned by Customer, GTA, or a third party. Customer acknowledges and agrees that GTA will not be liable, either in contract or in tort, for any loss resulting from any unauthorized access to, alteration of, or use of facilities used in connection with Service.
- c. Securing all licenses, permits, and other arrangements necessary for interconnection.
- d. Ensuring that Customer equipment and/or systems are properly interfaced with the Service and do not damage GTA facilities, injure its personnel or degrade service to other customers.
- e. Complying with GTA policies and procedures regarding Security, Change Management, Problem Management Escalation, Production Acceptance and Application Promotion for all Customer systems or applications as applicable to the Service.
- f. Providing access to Customer’s facilities and systems as may be reasonably required by GTA.
- g. Providing suitable office space and associated resources for GTA personnel working on Customer’s premises, including all necessary computing and office support resources.
- h. Ensuring that all Customer personnel who will work on GTA’s systems or equipment are adequately trained and qualified.
- i. Responding promptly, and in any event, within five (5) business days, to any GTA requests for direction, information, approvals, authorizations or decisions that are reasonably necessary for GTA to perform the Services.
- j. Leading and completing disaster recovery planning and performing application recovery in the event of disruption of Service.
- k. All Customer Content and for obtaining, maintaining and verifying proper

authorization for the use and display of any third party materials contained within Customer Content.

- l. Prepare annually a Customer Action Plan that provides GTA with an annual plan for each service area.

1.1.3 Access to GTA Systems: When a Customer is permitted access to GTA computer systems and data ("Systems") for purposes of managing and maintaining Service, the Customer shall:

- a. Access Systems only to the extent necessary to manage and maintain Service.
- b. Not disclose, provide, or otherwise make available, in whole or in part, Systems documentation or any related or other confidential material except to those having a need to know or as otherwise required by law.

1.1.4 Immediately notify the GTA if a security device assigned to a Customer is lost, stolen, or misplaced.

1.2 Service Limitations

1.2.1 Facilities Used for Service: The facilities used to provide Service will be exclusively of the GTA's choosing and shall remain the property of GTA. GTA may at any time substitute facilities used to provide Service, or it may substitute comparable service for the Service being provided to Customer. At Customer's reasonable request and cost, GTA will provide alternative or redundant service during facility or service substitutions. Customer will continue to pay for any such additional service provided by GTA until cancelled by Customer upon at least thirty (30) days prior written notice.

1.2.2 Availability of Facilities: Service is offered and furnished subject to the availability of facilities required to provide it. Notwithstanding any other provision herein, GTA may limit or allocate facilities and/or services among customers, if necessary, in order to: (i) manage its network in an efficient manner; (ii) meet reasonable customer service expectations; or (iii) furnish service to existing and future customers based on current and projected available capacity, taking into account forecasted Customer requirements. GTA may terminate Service or available billing options associated with Service upon written notice to affected Customers whenever necessitated by circumstances beyond GTA's control, including situations involving volumes or patterns that result, or could result, in network blockages or the degradation of Service furnished to the Customer or to other customers.

1.2.3 Customer Modifications: Customer shall not rearrange, disconnect, remove, modify, or attempt to repair any Service, or permit others to rearrange, disconnect, remove, modify, or attempt to repair Service, without the prior written consent of GTA.

1.3 General Provisions of Service

1.3.1 Order of Precedence: In the event of an inconsistency between these Service Terms and a term or condition in a written Service Agreement between GTA and the Customer, GTA's relationship with the Customer will consist of the following: (a) the term or condition in the written Service Agreement; (b) these Service Terms; and (c) the Products and Services Catalog.

1.3.2 Order Request Initiation: All requests for Service shall be initiated upon GTA's receipt of the latest version of the order form provided by GTA.

- 1.3.3 Quality of Service: GTA will perform Services in a professional and workmanlike manner consistent with reasonably applicable industry standards.
- 1.3.4 Service Inspection: GTA, upon reasonable notice, may:
- a. require that Service be made available for inspection, testing or adjustment so that it can be maintained in a satisfactory condition. During any period of such inspection, testing or adjustment of Service, any applicable Service Level Targets will not apply during the time Service was unavailable to the Customer; or
 - b. undertake inspections or testing as may be necessary to determine whether the requirements of these Service Terms are being satisfied in connection with the installation, operation or maintenance of Service. GTA may suspend, and subsequently discontinue, the provision of Service at any time, without penalty, if the Customer fails or refuses to comply with these inspection, testing or adjustment requirements.

2. TERM, CANCELLATION, SUSPENSION AND TERMINATION OF SERVICE

- 2.1 Term of Service: The term of Service shall begin on the Effective Date and end as of the end of the then current State of Georgia fiscal year (July 1 – June 30). Thereafter, the Term shall renew automatically on a year-to-year basis, unless either party gives the other at least thirty (30) days prior written notice of its intent not to renew the Term. The terms and conditions of the Agreement shall apply during any renewals of the Term.
- 2.2 Service Cancellation by Customer: If a Customer cancels an order for Service before Service commences or before completion of some period mutually agreed to between the Customer and GTA, the Customer will be billed and required to pay to GTA for its unrecovered and nonrecoverable expenditures incurred expressly on behalf of the Customer.
- 2.3 Service Suspension by GTA:
- 2.3.1 GTA may suspend the furnishing of any and/or all Service(s) with three (3) business days notice to Customer if Customer either: (i) does not pay when billed for Services; or (ii) indicates to GTA that it does not intend to pay for Service. GTA may suspend the furnishing of any and/or all Service(s) immediately if such suspension is necessary to protect against fraud or otherwise to protect GTA's personnel, facilities or services. If GTA takes immediate action pursuant to this Section, GTA will notify Customer of the circumstances that gave rise to the suspension as soon as practicable. In any case where GTA has suspended an affected Service or portion thereof, GTA will cease the suspension and restore service promptly upon remediation of any such circumstances that required suspension.
- 2.3.2 Suspension of Service by GTA will not relieve the Customer of any obligation to pay for Service previously furnished to the Customer or for any termination or other charges.
- 2.4 Service Termination: Each party has the right to discontinue Services for Cause. "Cause" shall mean a breach or default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within thirty (30) days after receipt of notice of such default (or such additional cure period as the nondefaulting party may authorize). Notwithstanding any termination of Services, Customer will remain liable for any applicable charges incurred prior to such termination.

- 2.5 Funding: The parties acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. If the source of payment for the charges payable hereunder no longer exist or are determined to be insufficient, this Agreement shall terminate without further obligation of the GTA or Customer as of that moment.
- 2.6 Notice: All notices required in these Service Terms (except invoices) must be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the address provided to Customer by GTA. Except as provided otherwise, notices will be deemed to have been given when received.

3. RATES, CHARGES AND PAYMENT

- 3.1 Service Charges: The Customer is responsible for payment to GTA for all charges associated with Service furnished to the Customer. This responsibility for payment is not changed by virtue of any use, misuse, or abuse of the Customer's Service or Customer-provided systems, facilities or services interconnected to the Customer's Service, which use, misuse, or abuse may be occasioned by third parties including, without limitation, the Customer's employees or other members of the public. Charges for Service may be:
- a. non-recurring or one-time charges that are payable when the Service with which they are associated has been performed. If an entity other than GTA imposes charges on GTA in connection with Service provided to a Customer, those charges, along with any applicable GTA charges, will be charged to the Customer;
 - b. recurring charges which are fixed in amount and not dependent on usage are billed in advance;
 - c. usage charges billed after each usage cycle associated with Service; or
 - d. reimbursable expenses for agreed upon incidental services or extraordinary equipment costs reasonably incurred by GTA in performing the Services, plus any administrative fees.

The charges for which the Customer is responsible are the rates and charges in effect at the end of the monthly billing period applicable to the Customer for the Service provided.

- 3.2 Payment Period: Invoices are due and payable in U.S. dollars within thirty (30) days of the invoice date, unless expressly indicated otherwise on the invoice or in a contract.
- 3.3 Past Due Accounts: GTA's obligations with respect to Service Level Targets shall be suspended during the time period when amounts are past due.
- 3.4 Delay in Billing Capability: If billing systems or other required support is not available to bill for Service, any Service feature, any Service-related surcharge, or any other charge element at the time of Service provision, GTA will bill for that Service, feature, surcharge or other charge element as soon as it is capable of doing so.
- 3.5 No Setoff: Customer may not set off any claims against the amounts due for Services provided by GTA.

4. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

- 4.1 GTA will not be liable for any failure of performance due to causes beyond its control, including, but not limited to, acts of God, fires, floods or other catastrophes; national emergencies, insurrections, riots or wars, strikes, lockouts, work stoppages or other labor difficulties; and any law, order, regulation or other action of any governing authority or agency thereof.
- 4.2 EXCEPT AS SPECIFICALLY SET FORTH IN AN AGREEMENT BETWEEN GTA AND CUSTOMER, GTA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY GTA SERVICES, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. GTA SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.
- 4.3 GTA will not be liable for any act or omission of any other person furnishing a portion of service, or for any act or omission of a third party, including those vendors participating in offerings made to Customer that involve Service, or for damages associated with service or facilities which GTA does not provide, or for damages which result from the operation of Customer-provided systems, facilities or services interconnected with GTA's Service.
- 4.4 GTA makes no guarantee or warranty with respect to Service installations at locations at which there is present an atmosphere that is explosive, prone to fire, dangerous or otherwise unsuitable for such installations. Customer shall notify GTA in the event such an atmosphere exists at any location in which installations are being planned or executed.

5. MISCELLANEOUS PROVISIONS

- 5.1 Customer acknowledges that GTA will, by virtue of the provision of Service, come into possession of information and data regarding Customer. This information and data ("Customer Data") shall include, but not be limited to, data transmissions, data containing personal and/or private information of Customer and its employees, and other data provided to or obtained by GTA in connection with the provision of Service. Customer acknowledges and agrees that GTA may use, process and/or transfer Customer Data: (a) in connection with provisioning of Service; and (b) to incorporate the Customer Data into databases controlled by GTA for the purpose of providing Service, administration, provisioning, billing and reconciliation, maintenance, support, fraud detection and prevention, and customer analysis and reporting; and (c) as may be required by the Georgia Open Records Act, O.C.G.A. § 50-18-70 *et seq.*, as it may be amended from time to time.
- 5.2 Except as otherwise set forth herein, all right, title and interest in and to all Intellectual Property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services identified herein, including any derivative works thereof, are owned by GTA or its licensors, and Customer shall make no claim of interest in or ownership of any such GTA Intellectual Property Rights. Other than the rights expressly granted in a Service Agreement, no title to the GTA Intellectual Property Rights is transferred to Customer.
- 5.3 Software and related documentation provided by GTA to Customer in connection with Service and not otherwise subject to either a separate written

contract between GTA and the Customer or to an accompanying software license (collectively the "Software") is subject to the following:

- a. In consideration for payment of any applicable fees, Customer is granted a personal, non-exclusive, non-transferable license to use the Software, in object code form only, solely in connection with Service for Customer's internal purposes on Customer-owned or Customer-leased equipment (the "License"). Customer may not use the Software (i) in connection with the products and/or services of any third party, or (ii) to provide services for the benefit of any third party, including without limitation as a service bureau.
- b. Customer may make one copy of the Software, other than the documentation, for archival or back-up purposes only, provided that any copyright and other proprietary rights notices are reproduced on such copy. Customer may not make any copies of documentation provided as part of the Software.
- c. Customer may not: (i) attempt to reverse engineer, decompile, disassemble or otherwise translate or modify the Software in any manner; or (ii) sell, assign, license, sublicense or otherwise transfer, transmit or convey Software, or any copies or modifications thereof, or any interest therein, to any third party.
- d. All rights in the Software, including without limitation any patents, copyrights and any other Intellectual Property rights therein, shall remain the exclusive property of GTA and/or its licensors. Customer agrees that the Software is subject to the provisions of any contract between the parties pertaining to "Confidential Information."
- e. Except to the extent otherwise expressly agreed by the parties in writing, GTA has no obligation to provide maintenance or other support of any kind for the Software, including without limitation any error corrections, updates, enhancements or other modifications.
- f. The License will immediately terminate upon the earlier of: (i) termination or expiration of any agreement between GTA and the Customer pertaining to the Software; (ii) termination of the Service with which the Software is intended for use; or (iii) failure of Customer to comply with any provisions of this Subsection. Upon termination of any License, at GTA's option, Customer will promptly either: (i) destroy all copies of the Software in its possession; or (ii) return all such copies to GTA.

5.4 **Governing Law.** These Service Terms shall be governed by and interpreted in accordance with the laws of the State of Georgia.

5.5 **Waiver and Severability.** Neither party's failure, at any time, to enforce any right or remedy available in these Service Terms will be interpreted as a waiver of such party's right to enforce each and every provision of the Service Terms in the future. All provisions of these Service Terms are severable, and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the remaining provisions. The remaining provisions will be interpreted in such a manner as to carry out the full intention of the parties.

6. DEFINITIONS

The following definitions shall apply to these Service Terms and any Service Agreement between the parties:

- "Customer" includes any and all State of Georgia entities, including but not

limited to departments, agencies, authorities, commissions, offices, councils, boards, colleges and universities. In addition, the term “Customer” shall include counties, municipalities and all other sub-divisions of the State.

- “Customer Content” means, but is not limited to, any and all applications, files, pages, data, works, information and/or materials comprising or related to the Customer’s application or system, including, without limitation trade or service marks, source code, object code, manuals, media, or other software or text provided by Customer to GTA.
- “Intellectual Property” shall mean any and all know-how, inventions, patents, copyrights, models, designs, trademarks, trade dress, trade secrets, test results, knowledge, techniques, discoveries, regulatory filings, or other information (whether or not patentable and whether or not in tangible or intangible form), and any other industrial or proprietary rights, and any documentation relating thereto, and any and all applications for any of the forgoing, whether or not registered.
- “Service Level Target” means the delivery of Services where the performance level meets (or exceeds) the expressly stated performance target for a stated measurement period.
- “Service Review Meetings” mean regular meetings that are held between representatives of the GTA and the Customer specifically to discuss issues arising from the delivery of the Services including the performance of the Service delivery.
- “Services” mean those Services that are specified in a schedule to a Service Agreement between GTA and Customer.
- “Support and Service Desk Services” mean the specified support Services provided by the GTA to the Customer to assist the Customer’s personnel to understand, operate and execute the delivered Services.